Control Number: 51415

Item Number: 621

Addendum StartPage: 0

SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	§ § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

INITIAL POST-HEARING BRIEF OF EASTMAN CHEMICAL COMPANY

TABLE OF CONTENTS

ACRONYMS 2

I. SUMMARY 3

IV. A. 6. ALLOCATED TRANSMISSION EXPENSES RELATED TO RETAIL BEHIND-THE METER GENERATION 5

A. Introduction – Eastman and Retail BTMG 5

B. SWEPCO's proposed $5.7 million in allocated transmission costs related to its unjustified, mismanaged, and discriminatory voluntary decision to report Eastman's retail BTMG load to SPP should be disallowed 7

VII. C. TRANSMISION RATE FOR RETAIL BEHIND-THE-METER GENERATION 21

XI. CONCLUSION 29

621

List of Acronyms and Defined Terms

Term	Definition
AEP	American Electric & Power
BTMG	Behind-the-Meter Generation
Commission	Public Utility Commission of Texas
CP	Coincident Peak
CSW	Central and Southwest Corporation
Eastman	Eastman Chemical Company
Entergy	Entergy Corporation
FERC	Federal Energy Regulatory Commission
ISOs	Independent System Operators
kW	Kilowatt
LLP	Large Lighting and Power
LMR	Load Modifying Resource
MISO	Midcontinent Independent System Operator
MOPC	Marketing and Operation Policy Committee
MW	Megawatt
NCP	Non-Coincident Peak
OATT	Open Access Transmission Tariff
PUCT	Public Utility Commission of Texas
PURPA	Public Utility Regulatory Policy Act
QF	Qualifying Facility
RR	Revision Request
RTOs	Regional Transmission Organizations
RTWG	Regional Tariff Working Group
SBMA	Supplementary, Backup, Maintenance and As Available Standby Power Service
SPP	Southwest Power Pool
SSGL	Synchronized Self-Generation
SWEPCO	Southwestern Electric Power
TIEC	Texas Industrial Energy Consumers

SOAH DOCKET NO. 473-21-0538
PUC DOCKET NO. 51415

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	**§ § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

INITIAL POST-HEARING BRIEF OF EASTMAN CHEMICAL COMPANY

TO THE HONORABLE STEVEN H. NEINAST, ROBERT H. PEMBERTON, CASSANDRA QUINN AND ANDREW LUTOSTANSKI, ADMINISTRATIVE LAW JUDGES:

Eastman Chemical Company (Eastman) files this Initial Post-Hearing Brief, respectfully showing as follows:

I. SUMMARY

SWEPCO asks the Public Utility Commission (PUCT or Commission) to permit, for the first time, recovery of "phantom" costs which SWEPCO falsely and entirely artificially attributes to use of the SWEPCO network of a single point in time and which SWEPCO admits on cross-examination does not actually occur. Recovery of these phantom costs from a customer who does not cause the attributed costs is unlawful, and the request must be denied.

The dispute concerning whether SWEPCO will be permitted to artificially inflate its cost-of-service revenue requirement by allocating a dollar amount of "costs" allegedly related to serving retail behind-the-meter generation (BTMG) is squarely a dispute this Commission must decide. Similarly, when SWEPCO asks that this Commission agree to impose a rate to recover these non-existent costs from a single customer that SWEPCO admits does not actually use the system in the way initially alleged, that request is squarely a question for this Commission. Only this Commission has authority to set retail rates for SWEPCO's customers in Texas. SWEPCO's transparent attempt to hide behind the Southwest Power Pool (SPP) as even a partial justification for this sham is entirely ineffective and should be rejected.

Specifically, Eastman's dispute in this proceeding is with SWEPCO's proposal to include approximately $5.7 million in additional, artificial, allocated costs to its Texas revenue requirement and to set a new rate to recoup the majority of those costs from one customer –

Eastman. SWEPCO's decision to start reporting Eastman's self-generated BTMG load to SPP was voluntary; it is a decision that is contrary to basic cost causation ratemaking principles and is discriminatory. The new incremental "load" that SWEPCO includes as justification for this proposed dramatic rate increase to Eastman is nothing but a phantom load that is not on SWEPCO's system at the time of the hourly – or any – coincident peak.

To make matters worse, SWEPCO proposes a new rate that, by its very definition, only applies to Eastman.[1] Through that rate, Eastman would be required to pay an additional $3.96 million annually, or a 110% increase[2] from what it currently pays to SWEPCO today for maintenance and standby service. It still remains unclear what customer class or classes pay the difference in additional $1.8 million in revenue requirement associated with SWEPCO's additional jurisdictional transmission costs associated with including retail BTMG in its monthly reporting. And while that question is part of the equation in the determinations to be made on this issue, Eastman submits that the basic fallacies of SWEPCO's decisions to start reporting Eastman's retail BTMG load in its monthly load reports, and the inherent discriminatory and detrimental manner that it proposed a new rate that would apply only to Eastman (even after SWEPCO's rebuttal case), provide ample reasons to reject SWEPCO's proposals. Accordingly, Eastman respectfully requests that the Commission reject inclusion of the disputed artificial increase in SWEPCO's revenue requirement and of a new rate applicable only to Eastman. The Commission should apply the appropriate longstanding legal and policy standards it uses to establish an electric utility's cost of service and rates to be paid by Texas ratepayers. In doing so, the Commission will be properly exercising its authority to disallow the $5.7 million in additional costs allocated to SWEPCO included in its cost of service and to reject the proposed new rate that effectively and discriminatorily is targeted to a single customer.

---

[1] Even SWEPCO's proposed rate in rebuttal effectively applies only to Eastman. *See* Section VII.C.3., *infra*.

[2] Eastman currently pays SWEPCO approximately $3.6 million per year for maintenance and standby service. Direct Testimony of Ali Al-Jabir, Eastman Ex. 1 at 3.

IV. A. 6. ALLOCATED TRANSMISSION EXPENSES RELATED TO RETAIL BEHIND-THE-METER GENERATION

A. Introduction – Eastman and Retail BTMG

Eastman generates its own electricity for use on its campus through its on-site cogeneration facilities in SWEPCO's Texas service area.[3] The cogeneration process is highly efficient because it creates heat that is recycled to provide steam for Eastman's operations, in addition to serving the electric load needs of the campus.[4] Eastman uses its retail behind-the-meter generation to provide approximately 150MW of power to supply the full load requirements of its operations during all times when this generation is available.[5] It is undisputed that Eastman's cogeneration facility is a Qualifying Facility (QF) under PURPA.[6] Eastman purchased the cogeneration facilities from AEP in 2008 and has been SWEPCO's customer since that time.[7]

As a SWEPCO retail customer, Eastman purchases maintenance and standby backup power by contract that includes negotiated contract demand for such power[8] and refers to rates found in SWEPCO's Supplementary, Backup, Maintenance and As-Available Power Service Tariff.[9] While Eastman's cogeneration accounts for all of its electric load needs, there are situations in which Eastman may require standby electricity from SWEPCO either for scheduled maintenance outages or for forced/unscheduled outages. To cover both of these situations,

---

[3] Eastman Ex. 1 at 4.

[4] *Id.*

[5] Eastman Ex. 1 at 9. Eastman also sells power from its on-site generation that is in excess of its local load requirements into the wholesale power market when it is profitable to do so. *Id.* at 10. Eastman's sale of excess generated power is not an issue in this case or used as a basis for SWEPCO's decision to report gross load to SPP.

[6] *Id. See*, 16 U.S.C. § 796(18)(A)(1980) and 18 C.F.R. § 292.203 (2009). QFs are small power production facilities and cogeneration facilities that are either self-certified or certified by the FERC as QFs under PURPA. QFs receive certain benefits, such as the right to sell power to utilities and the right to purchase certain services from utilities. Eastman Ex. 1 at 20, fn. 16. Small solar rooftop generators are also QFs. Tr. 1162:16-19 (Ross Rebuttal)(May 25, 2021).

[7] Tr. 1120:23-25 (Ross)(May 25, 2021). The configuration of Eastman's facilities was basically made when CSW, the predecessor of AEP, designed and built the cogeneration facility. The configuration was designed to enable CSW to send excess electricity to the grid and was made by CSW sometime between 1999 and early 2000's. Tr. 1121:20 – 1122:4 (Ross)(May 25, 2021).

[8] Tr. 1514:5-9 (Jackson)(May 26, 2021).

[9] The terms, conditions, and rates of the Supplementary, Backup, Maintenance and As-Available Standby Power Service Tariff (SBMA Tariff) tariff can be found in SWEPCO Ex. 1, Sch. Q-8.8 at 99-104.

Eastman pays SWEPCO monthly Maintenance Power Charges[10] and As-Available Standby Power Charges.[11] For routine maintenance outages, Eastman coordinates with SWEPCO to avoid system peaks, and then pays a daily demand charge for the standby power used during the outage.[12] When unexpected outages occur, Eastman takes standby (backup) power from SWEPCO and pays for such power for the duration of the outage. Some of this service is taken on an as-available basis, meaning that SWEPCO is not required to provide the service if there is insufficient electrical service available.[13] Currently, Eastman pays SWEPCO approximately $3.6 million annually for the Maintenance and Standby Services.[14]

Eastman's cogeneration load is considered retail BTMG. Retail BTMG is on-site generation that a retail customer operates at its own location to serve its own load requirements at that location.[15] This on-site generation serves the retail customer's own local power requirement behind the interconnection and metering point with the utility's distribution and/or transmission provider's system.[16] Retail BTMG can be operated at a larger scale by industrial customers, such as Eastman, or at a smaller scale by residential and commercial customers using rooftop solar power or other distributed generation applications. Retail BTMG's characteristics include:

- It has an extremely high availability factor and highly likely to be available, particularly in the case of QF BTMG; [17]

- It is fully utilized whenever it is available and does not use the transmission grid to service its on-site retail load, except when the on-site generation is experiencing a forced or planned outage;

---

[10] SWEPCO Ex. 1, Sch. Q-8.8 at 102. This charge is also referred to as a reservation demand charge. Eastman Ex. 1 at 4.

[11] *Id.* at 101-02.

[12] Supplemental Direct Testimony of Ali Al-Jabir, Eastman Ex. 2 at 10.

[13] Eastman Ex. 1 at 4.

[14] *Id.* at 5.

[15] Eastman Ex. 1 at 5.

[16] Eastman Ex. 1 at 5.

[17] *Id* In contrast, the availability of self-generation is limited by solar incidence, which can be improved to some degree when the roof top solar is coupled with battery storage. Regardless of the differences, though, retail BTMG's primary characteristic is that the customer's load is typically self-generated behind the utility meter.

- Planned outages for retail BTMG load can be scheduled to occur during non-peak conditions; and

- As a result, it is very unlikely to impose any demand on the transmission grid at the time of the system peak, unless there is a forced outage at the time of that peak.[18]

In Eastman's case, its retail BTMG is used to cover all of its load requirements whenever and as long as its BTMG is operational.[19] Eastman's standby and maintenance power purchases from SWEPCO to serve Eastman's load have been historically low in relation to its own load, even during the periods of winter or other storm events. Over the past decade, Eastman has on average taken maintenance power for scheduled outages on 10 days per year. These maintenance outages are scheduled in the shoulder months of the spring and fall when system loads are low. Unplanned outages requiring backup service from SWEPCO are very limited and occur three days per year on average.

Frequency of Power Purchases from SWEPCO to Serve Eastman's Load[20]

	2016 to 2020					
	2016	2017	2018	2019	2020	Total
Percentage of Year	0.9%	4.3%	0.1%	1.9%	4.6%	2.4%

Neither Eastman's facilities nor load characteristics have changed for almost twenty years.

B. SWEPCO's proposed $5.7 million in allocated transmission costs related to its unjustified, mismanaged, and discriminatory voluntary decision to report Eastman's retail BTMG load to SPP should be disallowed.

The Commission should disallow $5.7 million in SWEPCO's revenue requirement for several reasons. First and foremost, the $5.7 million are not costs of providing service to Eastman or any other retail BTMG customer; those costs represent an estimate of additional

[18] Eastman Ex. 2 at 20. And while Eastman proffered undisputed evidence as to this fact, SWEPCO failed to offer any evidence that Eastman imposes demand on SWEPCO's system other than for scheduled and unforced outages.

[19] Eastman Ex. 1 at 5.

[20] *See* Eastman Ex. 2 at Exhibit AZA-6. The table shown above is an excerpt of the public portions of Exhibit AZA-6. The percentages are based on the number of hours in which Eastman was importing power from SWEPCO during either forced or planned outages of its on-site generation facilities compared to its total load generated behind the meter.

artificial jurisdictional costs as a result of SWEPCO's decision to report a phantom retail BTMG load that never appears on SWEPCO's transmission system at coincident peak. Second, SWEPCO's decision to report the phantom load was voluntary, unjustified, and unreasonable. Third, SWEPCO's voluntary decision to report retail BTMG using only Eastman's cogeneration load was unjustified and discriminatory. Any one of these reasons support disallowance of the $5.7 million in allocated transmission costs in SWEPCO's cost of service.

1. Standards.

This Commission has the authority to set retail rates, including those rates charged to industrial customers.[21] In setting retail rates, the Commission establishes the utility's cost of rendering service to the public, comprised of two components: allowable expenses and return of and on invested capital. Only those expenses that are "reasonable and necessary to provide service to the public" shall be included in allowable expenses in the utility's cost-of-service.[22] In this case, SWEPCO has the burden of proof to establish that any costs, including proposed allocated transmission costs, are reasonable and necessary to provide service.

2. SWEPCO's proposed $5.7 million in allocated transmission costs should be disallowed in SWEPCO's cost of service.

a. The $5.7 million in jurisdictional allocated costs are based on a phantom load and are not actual costs of providing a service.

SWEPCO's proposed inclusion of $5.7 million in jurisdictional allocated costs should be disallowed for the simple fact that these costs do not represent a cost of providing service to Eastman or any other customer; the costs represent a fictional or phantom load.[23] SWEPCO even acknowledged as much in 2019:

> Electricity that is produced and consumed on site behind the retail meter does not flow over a Network Customer's [SWEPCO's] transmission or distribution system. Indeed, it is entirely possible that the equipment using the behind-the-meter generation would never take service from the grid. There is no rational basis for treating a retail customer's own consumption of its own electricity as Network Load. . . .

---

[21] TEX. UTILITIES CODE § 36.001 (hereinafter referred to as "PURA").

[22] 16 TEX. ADMIN. CODE §25.231(b).

[23] Tr. 1336:3-13 (Pollock)(May 25, 2021).

> To the extent a retail customer provides its own electricity, it is not using the grid, and its usage is not a part of the Network Load at the time of the monthly Peak when the Network Load is calculated.[24]

The sole purpose of the phantom load is to increase allocation of jurisdictional transmission costs to SWEPCO for Texas to the tune of $5.7 million which SWEPCO now seeks to include in its cost of service.[25]

SPP allocates network transmission costs to Network Customers,[26] such as SWEPCO, based on SWEPCO's reported Network Load. Section 34.4 of SPP's Open Access Transmission Tariff (OATT) defines how a Network Customer's Monthly Network Load is determined; a definition that was adopted and has not changed since adoption.[27] The operative provision in this section provides:

> The Network Customer's monthly Network Load is its hourly load (60 minute, clock hour); provided, however, the Network Customer's monthly Network Load will be its hourly load coincident with the monthly peak of the Zone where the Network Customer is physically located. . . .[28]

SPP then uses those reports provided by all Network Customers to allocate transmission costs on a coincident peak load ratio share basis, using the ratio of each Network Customer's monthly load at the time of the monthly system peak demand of the applicable SPP transmission zone to the total monthly peak load of that zone.[29]

Prior to October 2018, SWEPCO did not include any load served by the retail BTMG in its load ratio share reports to SPP, which is also referred to as a "load netting approach."[30] Then, in October 2018, SWEPCO started to use a "gross load" approach, which essentially added to the meter reading from the retail BTMG customer the portion of the retail customer's load that is being served by the customer's own generation behind the meter at the time of the monthly zonal

---

[24] TIEC Ex. 36C.

[25] Eastman Ex. 7.

[26] Network Customers are wholesale customers such as utilities, municipalities and cooperatives who purchase network transmission service under the SPP Tariff to deliver power to their retail loads. Eastman Ex. 1 at 7.

[27] Tr. 784:8-21 (Locke)(May 21,2021).

[28] Southwest Power Pool, Inc., Open Access Transmission Tariff § 34.4 (OATT). For a full copy of this provision, see TIEC Ex. 34 at 1.

[29] Eastman Ex. 1 at 7. SWEPCO is in Zone 1. Tr. 760:20-22 (Locke)(May 21, 2021).

[30] Eastman Ex. 1 at 7.

peak demand. Applying that approach, then SWEPCO increased its monthly Network Load (*e.g.*, actual metered retail load at the time of the peak plus the retail BTMG self-generated load that is not traversing over SWEPCO's transmission system).[31] As Eastman witness Ali Al-Jabir explained, gross load reporting generally has the effect of requiring the Network Customer, in this case SWEPCO, to report the maximum non-coincident peak (NCP) demand of the Eastman's load, rather than Eastman's coincident peak demand, even if all or a portion of the retail customer's load is being served by Eastman's own retail BTMG at the time of the zonal peak.[32]

As SWEPCO admits, the Eastman load that is served by its retail BTMG does not take power from SWEPCO and does not contribute to SWEPCO's system demand, except when its retail BTMG is off-line due to an outage.[33] By its very nature, Eastman's retail BTMG load is typically available except for scheduled maintenance outages that are coordinated during the shoulder months of the spring and fall, when system loads are low.[34] The only time when the load served by Eastman's retail BTMG could impose a demand on the SWEPCO system at the time of the transmission zonal peak would be in the rare instances when a forced outage of Eastman's retail BTMG coincides with the time of the zonal peak.[35]

SWEPCO again admits this to be true:

> It has sometimes been argued that load served by the [BTMG] should be counted as Network Load because there may be certain circumstances where [BTMG] would be unavailable and the load would then use the T&D system of the Network Customer. At those times, the actual load that such a retail customer places on the grid would be part of the Network Load and, to the extent that it occurs during a monthly peak, would be considered a "Network Customer's Monthly Network Load" under Section 34.4 of the SPP OATT. **But customers are not deemed to have their entire potential load counted as Network Load at all times.** If any customer, be it residential, commercial, or industrial is using less than its maximum demand at the time of the monthly peak, Network Load nonetheless uses only the actual demand the customer imposes on the system at

[31] Eastman Ex. 1 at 7-8.

[32] *Id.* at 8.

[33] Tr. 1144:10-1145:6 (Ross)(May 25, 2021)("The BTMG load is still there, but it's not being served by SWEPCO. The energy is not being transmitted from our resources to that customer.").

[34] *Id.*

[35] Eastman Ex. 1 at 10. And, in that rare instance, when Eastman is forced to take power from SWEPCO, Eastman already compensates SWEPCO by paying the standby power rates found in the SBMA Tariff.

the time. **Further, it is well established that Network Customers that have retail interruptible customers that are not on the system at the time of the peak do not have to add the interrupted load to their actual loads.**[36]

Consequently, the Network Load that SWEPCO now reports to SPP is a phantom load that does not actually appear on the SWEPCO transmission system at coincident peak. SWEPCO admits as much.[37] Not one of the SWEPCO witnesses identified any new or additional costs caused by Eastman to provide service to Eastman or any customer during the test year. And how could they? Eastman's facilities and load characteristics have not changed. The only change that has occurred is SWEPCO's voluntary decision to reverse its longstanding practice and start reporting a proxy for Eastman's phantom retail BTMG load in its monthly Network Load report to SPP.[38] The impact of that reporting is an artificial increase in the reported amount of load SWEPCO actually serves which drives an increase of SPP network transmission costs allocated to SWEPCO by increasing SWEPCO's share of the total zonal peak load.[39]

The Commission should see the additional $5.7 million in costs for what they are – costs associated with a phantom fictional load that do not cause any additional real costs or burden on SWEPCO's system and are not used to provide service to Eastman or the public. Texas ratepayers should not be forced to pay phantom costs. The costs should be disallowed on this basis alone.

b. SWEPCO's decision to report Eastman's retail BTMG load was voluntary and unreasonable.

(1) SWEPCO's decision to report Eastman's retail load was wholly and totally voluntary.

SWEPCO brought this dispute on itself and it is now before the Commission with no change to SPP's tariff or actual usage of SWEPCO's network at coincident peak because SWEPCO chose: (1) to reverse its longstanding practice and to begin including Eastman's retail BTMG load in its monthly Network Load reporting to SPP;[40] and (2) to include, for the first

[36] TIEC Ex. 36C (emphasis added).

[37] TIEC Exs. 36B and 36C.

[38] Tr. 656:12-18 (Pollock)(May 21, 2021).

[39] Eastman Ex. 1 at 12; Tr. 653:21-654:8; 656:12-18 (Pollock)(May 21, 2021).

[40] Tr. 1128:17-20 (Ross)(May 25, 2021).

time, an estimated $5.7 million in additional artificial transmission allocated costs from SPP solely for Texas in its revenue requirement in this case.[41] SWEPCO points to SPP as the source for its decision, but SPP has already pointed the finger right back at SWEPCO when SWEPCO witness Locke stated, ". . . it's the [Network Customer's] obligation to report compliance with the tariff."[42]

Eastman is caught in the middle of SPP and SWEPCO, neither of which want to take responsibility for the decision to start artificially including Eastman's retail BTMG load in SWEPCO's monthly network load report. The Commission should see this finger pointing game for what it is — an unjustified, poorly managed, and discriminatory implementation by SWEPCO of a dramatic change in its load reporting that was not triggered by tariff or regulatory changes.

SWEPCO's decision, if not disallowed in this case, will cost Eastman an additional $3.96 million annually for a service it does not take, costs it does not create, and associated with a load that does not traverse either the SWEPCO or SPP systems at the time of SWEPCO's monthly hour coincident peak. The Commission should reject SWEPCO's unjustified request by finding that SWEPCO's decision to start reporting Eastman's retail BTMG load in October 2018 was voluntary, unjustified, and discriminatory, and, therefore not reasonable and necessary to provide service to the public.

(2) SWEPCO's imprudent decision was voluntary.

SWEPCO's decision to start reporting Eastman's retail BTMG load was wholly and completely voluntary. SWEPCO's decision was voluntary for three reasons. *First*, there was no explicit SPP directive for SWEPCO or any other Network Customer to start including retail BTMG load in its monthly Network Load reported to SPP. SWEPCO witness Locke could not identify a specific date or provide a specific directive.[43] When asked to produce written communications, such as directives, from SPP to SWEPCO, SWEPCO could not produce a

[41] Eastman Ex. 7 ($5.7 million); Eastman Ex. 3 (BTMG not in Arkansas rate case); Tr. 1167:22-1168:4 (Ross)(May 25, 2021). SWEPCO admits that it did not report any retail BTMG load in its monthly reports to SPP for Arkansas or Louisiana. Tr. 1165:21-1167:6 (Arkansas) and 1168:15-1169:6 (Louisiana)(Ross)(May 25, 2021).

[42] Tr. 771:18-23 and 772:16-25 (Locke)(May 21, 2021). Mr. Locke went on to say that SPP has "an obligation under the [OATT] to accept the network load reports that are provided to us by our customers." *Id.* at 774:8-10.

[43] Tr. 788:3-7 (Locke)(May 21, 2021).

single document.[44] SWEPCO witness Locke described the SPP move as a "concerted effort" to communicate to its Network Customers.[45] These actions do not constitute a directive. *Second*, there had not been any change in the OATT definition of how Network Load is determined or any recent FERC decisions interpreting network load reporting for retail BTMG that triggered SWEPCO's decision to reverse longstanding practice and start reporting Eastman's retail BTMG load.[46] *Third*, SWEPCO knew that SPP had no authority to enforce such an interpretation or to penalize SWEPCO if it chose not to implement any alleged SPP directive.[47]

(3) SWEPCO's imprudent decision was unjustified because SPP had not finalized a formal business practice or OATT revision that requires all Network Customers to consistently include retail BTMG in monthly network load reporting.

SWEPCO admits that prior to October 2018, it had not included Eastman's retail BTMG load to SPP.[48] SWEPCO has been involved with the "policy" debate on the proper treatment of retail BTMG as an SPP Network Customer since as early as 2016. During the time frame between 2016 and 2019, SWEPCO not only knew that there was no agreement among SPP Network Customers on whether retail BTMG load should be included in Network Load, but SWEPCO actively advocated that retail BTMG load *should not* be included. The following key facts in the chronology of this dispute support this conclusion:

- SPP and SWEPCO admit that FERC has not changed the OATT's definition of "Network Load" since 1998, when it was adopted; a definition that forms the basis of what and how SWEPCO is required to report Network Load to SPP.[49]

---

[44] TIEC Exs. 66, 67, and 68.

[45] Tr. 788:24-789:5 (Locke)(May 21, 2021).

[46] SPP points to FERC Order Nos. 888, 888-A, and 890 (issued 2007) for the basis of its "concerted effort" interpretation. These Orders were adopted by the FERC in 1996, 1997, and 2007, respectively; certainly nothing new or changed in or around 2016-2017 when SPP started this initiative. But as Eastman witness Al-Jabir explained, none of those decisions dealt with *retail* BTMG; and, instead only dealt with wholesale BTMG which has significantly different characteristics and requirements than retail BTMG. Eastman Ex. 1 at 19-20; Eastman Ex. 2 at 24-28.

[47] Tr. 771:18-23 (Locke)(May 21, 2021). SPP has not taken any action with the FERC related to noncompliance on reporting of retail BTMG. Tr. 775:6-12 (May 21, 2021). Likewise, SWEPCO has not taken any action as a Network Customer to resolve the dispute. Tr. 856:7-25 (Locke)(May 21, 2021).

[48] Tr. 1128:17-24 and 1135:10-16 (Ross)(May 25, 2021).

[49] Tr. 784:18-21 (Locke)(May 21, 2021); Tr. 1128:21-24 (Ross)(May 25, 2021).

- In its October 13, 2016, Strategic Planning Committee presentation, SPP staff and working groups recognized that a "business practice" related to BTMG had started as early as 2014; but SPP's Marketing and Operation Policy Committee (MOPC) did not approve a practice during that time.[50]

- In August 2017, SPP did not adopt Revision Request (RR) 241 entitled "MOPC Policy on Determination of Network Load", which would have authorized an amendment to the OATT to require Network Customers to include retail BTMG loads greater than 1 MW in reporting monthly loads to SPP.[51]

- In September 2017, in response to an SPP survey of its Network Customers regarding the treatment of retail BTMG load and current reporting of such loads in monthly network load reports submitted to SPP, AEP, on behalf of SWEPCO and its affiliates, not only advised SPP that it did not report retail BTMG in its monthly reports, it also provided several reasons why it was not reporting this load, including that it would be inconsistent with PURPA QF rules and would be reporting a phantom load.[52]

- In SPP presentations in 2018 and 2019, SPP Staff acknowledged and reported to the MOPC that SPP's interpretation to require gross reporting was not consistently followed by all Network Customers[53] and continued to identify specific stakeholders' opinions that disagreed with SPP's interpretation – including AEP on behalf of SWEPCO and its affiliates.[54]

- In response to yet another SPP survey on treatment of retail BTMG load in 2019 (after SWEPCO decided to start reporting Eastman's retail BTMG load as part of network load reporting), a minority of Network Customers (11 out of 44) were reporting gross load to SPP and the remainder of the responding Network Customers,

---

[50] TIEC Ex. 45 at 3.

[51] TIEC Ex. 42. The context of the 2017 RR was explained, "[a]t the July 2017 MOPC meeting, the RTWG requested that if the MOPC would like the RTWG to continue in its efforts to develop Tariff language to address the Behind-the-Meter/Network Load issue that the MOPC settle the policy debate over the resource's MW threshold for load exclusions and other resource inclusions/exclusions from Network Load." *Id.* at 1. RR 241 was rejected. Tr. 1134:21-24 (Ross)(May 25, 2021). Presumably, in 2017, the SPP Staff and stakeholder working group (RTWG) believed that it was necessary to change the OATT definition of Network Load to specifically require gross reporting of retail BTMG load greater than 1 MW. Tr. 1131:10-12 and 19-23 (Ross)(May 25, 2021). SWEPCO witness Locke may disagree with the way the RR was drafted, but the RR speaks for itself, which was supported by SPP Staff. Tr. 843:3-6 (Locke); Tr. 846:20-847:2 (Locke)(May 21, 2021).

[52] TIEC Ex. 36B.

[53] *See* Rebuttal Testimony of Richard C. Ross, SWEPCO Ex. 52, Ex. CRR-1R (Att. 1-Mar. 28, 2018) at 49-51 and (Att. 2-Jan. 11-12, 2021) at 59 ("**lack of clarity and/or difference of understanding** regarding the treatment of BTMG in the context of Network Load reporting" [emphasis in original]). In 2017, SPP Staff quoted responses from the 2017 survey by Network Customers who supported that retail BTMG should not be included in the monthly network load reports. *See, id.* at Ex. CRR-1R (Att. 1) at 49-51. Then in 2019, the SPP Staff summarized the results of that survey where 12 Network Customers thought that the gross load reporting should be used, while 30 Network Customers thought either retail BTMG should be netted completely or in part. *See, id.* (Att. 2) at 71.

[54] TIEC Ex. 36C.

including AEP, recommended that retail BTMG load only be included under limited circumstances.[55]

- In the most recent MOPC presentation dated January 11-12, 2021, entitled UPDATE ON MOPC ACTION ITEM 303, SPP staff proposes to "DEVELOP A WHITEPAPER CONTAINING **PROPOSED POLICIES FOR PROPER TREATMENT** OF BEHIND-THE-METER LOAD AND GENERATION" and such action has been deferred at least until July 2021.[56] In other words, the dispute within SPP and by its stakeholders on this issue *is not settled*. Yet, SWEPCO proposes to include $5.7 million in allocated artificial costs in its revenue requirement to set base rates and a new rate applicable only to Eastman for the duration of the rates approved by the Commission.

(4) SWEPCO's imprudent decision was voluntary because it knew that SPP has no authority to enforce or to penalize SWEPCO.

Notwithstanding all of these facts, in October 2018, at least one year after SPP began "communications" and a "concerted effort" regarding its newly found interpretation of the OATT, SWEPCO chose to reverse course and add a proxy for retail BTMG in its monthly network load reporting. The testimony is undisputed it was not required to do so; it chose to do so voluntarily. SPP admits it has no authority to audit Network Customer's reports and it has no enforcement responsibility.[57] SPP acknowledged that it had "an obligation to accept the network load reports provided by Network Customers, such as SWEPCO.[58] With all of the controversy, uncertainty, and inconsistency within SPP and its Network Customers on this issue and with knowledge that other similarly situated Network Customers were not including retail BTMG load in their monthly reports; and knowing that SPP lacked enforcement authority – SWEPCO could have and should have declined to start reporting Eastman's retail BTMG load in its monthly reports. This voluntary decision to include Eastman's retail BTMG load in SWEPCO's network load reporting cannot be anything other than unreasonable and imprudent.

c. SWEPCO's voluntary decision to include retail BTMG load in its monthly network load was unjustified.

In making such a significant and impactful change, SWEPCO had other reasons to decide not to include Eastman's retail BTMG load in its monthly network load report. SWEPCO knew

[55] TIEC Exs. 36A (HSPM) and 36C (AEP Response to 2019 survey).

[56] Eastman Ex. 2 at 11-12 *citing* SWEPCO Ex. 52 at Ex. CRR-1R at 41 (emphasis added) and 63.

[57] Tr. 771:15-18 (Locke)(May 21, 2021).

[58] Tr. 774:8-10 (Locke)(May 21, 2021).

that its decision was inconsistent and contrary to PURPA rules applicable to QFs, and it knew that other similarly situated Network Customers in other RTOs did not include retail BTMG load in their reporting.

(1) SWEPCO's decision was imprudent because it knew that including retail BTMG in monthly load reporting was inconsistent with PURPA QF rules.

In addition to the continued uncertainty and inconsistent reporting by SPP Network Customers, SWEPCO not only knew that reporting retail BTMG load as part of the monthly Network Load was inconsistent with PURPA rules related to QFs, but it stated in no uncertain terms that SPP's "interpretation" conflicted with such rules. As explained by Eastman witness Al-Jabir, the FERC established standby service rules for QFs based on provisions of the PURPA.[59] These rules state that standby service provided to QFs "shall not be based (unless supported by factual data) upon the assumption that forced outages or other reductions in electric output by all QFs on an electric utility's system will occur simultaneously, or during the system peak, or both."[60] SWEPCO recognizes this requirement is applicable to its current standby rates – rates that Eastman pays for standby electric service.[61] SWEPCO's decision to include Eastman's retail BTMG in its network load reporting is directly contradicted by the FERC's standby rules, which requires that the rates not be designed based on the probability that QF outages will occur at the time of the system peak. Any purported assumption that transmission capacity must be available to fully cover QF outages at all times is inapposite of this rule.[62]

And, again, SWEPCO admits that inclusion of retail BTMG load is inconsistent with the PURPA QF rules:

> SPP Conflicts [sic] with PURPA by reaching behind the retail meter. SPP position is inconsistent with the spirit of PURPA. PURPA requires that the retail rates for standby power should not be based on the assumption that forced outages and all other reductions in output by QF's will occur simultaneously or during the time of system peak. Likewise, we do not assume that each individual retail load

[59] Eastman Ex. 1 at 24.

[60] 18 C.F.R. § 292.305(c)(i)(2011). The PUC has adopted rules that implement this same ratemaking principle. 16 TEX. ADMIN. CODE § 25.242(k)(3).

[61] Tr. 1142:6-17 (Ross)(May 25, 2021).

[62] Eastman Ex. 2 at 7-8.

will be at its peak usage for billing purposes and allow that diversity. Why should we treat this differently as opposed to load that was just off during the peak?[63]

(2) SWEPCO's imprudent decision was voluntary as it knew that other RTOs did not require Network Customers to report retail BTMG – even without any tariff changes.

As Eastman witness Al-Jabir explained, several other Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) do not require Network Customers to include the load served by retail BTMG in determining monthly network load.[64] Most notably, the Midcontinent Independent System Operator (MISO) does not do so and it does so without an explicit tariff provision that permits exclusion.[65] MISO's Tariff is largely similar language to the SPP OATT with regard to the allocation of network transmission costs.[66] In integrating Entergy, a Network Customer, into MISO, MISO adopted a MISO QF Integration Plan that specifically allowed for netting of the load served by QFs in Entergy's service area for the purpose of determining the Network Load of the Entergy operating companies.[67] In a complaint case regarding the MISO QF Integration Plan, the FERC declined to order changes to the Integration Plan or to require the Integration Plan to be included in MISO's Tariff.[68] This decision allowed Entergy to continue to report a QF's net load for the purpose of determining Network Load and to exclude the load served by retail BTMG from its calculations.[69] There were no tariff changes or a FERC decision to rely upon – MISO handled its retail BTMG decision in an integration plan designed to be compliant with the OATT. SWEPCO knew that MISO and other RTOs and ISOs did not require reporting of retail BTMG in monthly network load reports

---

[63] TIEC Ex. 36B at 1 (AEP's response to 2017 SPP survey).

[64] Eastman Ex. 1 at 19-22.

[65] *Id. Also see* Eastman Ex. 2 at 17-20.

[66] The only distinction is that MISO defines "Behind the Meter Generation" to be a Load Modifying Resource" (LMR). In general, only wholesale BTMG load is being registered with MISO as LMR BTMG. The reported load includes wholesale BTMG on a gross basis, but it does not include any retail BTMG. As a result, MISO's treatment of LMR BTMG generally does not impact the treatment of retail BTMG. Eastman Ex. 1 at 21.

[67] Eastman provided a copy of the MISO Integration Plan, entitled *MISO Qualifying Facilities (QF) Generator Readiness for MISO Reliability Coordination and Market Integration* (prepared Oct. 10, 2012). *See* Eastman Ex. 2 at Exhibit AZA-5 at 12-14 (native document page numbers).

[68] Occidental Chemical Corp. v. The Midwest Independent System Operator, Inc., Order Denying Complaint, 155 FERC ¶ 61,068 at 76 (2016).

[69] *Id.*

and should have taken that into account in deciding not to include Eastman's retail BTMG phantom load in its monthly Network Load reporting.[70]

d. SWEPCO's voluntary decision was and is discriminatory, and therefore, is unreasonable.

After it made its unreasonable and imprudent voluntary decision to start reporting an artificial number for Eastman's retail BTMG load in its monthly network peak load reports and not to recognize other BTMG, SWEPCO implemented the decision in a significantly discriminatory manner and in a manner that this Commission should find is wholly unreasonable.

First, after its decision to report, SWEPCO did not report any load for any retail BTMG customers in Arkansas or Louisiana.[71] SWEPCO has at least one industrial retail BTMG customer (a paper mill) in Arkansas.[72] And, it has solar retail BTMG customers in both Arkansas and Louisiana, but SWEPCO says it has no metering data.[73] But it did not include any of those retail BTMG loads in its monthly network load reports and it does not appear that it took any measures that would enable it to report any of these loads. SWEPCO recognizes it has other retail BTMG customers in both states but does not propose to increase the transmission cost allocation from SPP in either state or to treat any other retail BTMG customer as it would treat Eastman.

Second, for Texas, SWEPCO made at least two critical errors in order to fabricate what and how to report retail BTMG load. The first mistake was that SWEPCO manufactured an artificial coincident peak at the zonal hour to report to SPP. It used "load values" related to electricity that was solely generated and consumed by Eastman. SWEPCO witness Ross admits as much during cross-examination:

> Q. But the thing different in this case for the first time we have a proposal to include in network load a certain number of megawatts for a retail customer that SWEPCO is not serving at the time of the coincident peak?
>
> A. Yes.[74]
>
> . . .

---

[70] SWEPCO Ex. 52 at CRR-1R at 44-45 (Att. 1) and 91-96 (Att. 2).

[71] Eastman Ex. 3; Tr. 1169:1-6 (Ross)(May 25, 2021).

[72] Tr. 1166:3-12 (Ross)(May 25, 2021).

[73] *Id.* at 1168:5-25 (Ross)(May 25, 2021).

[74] Tr. 1167:16-21 (Ross)(May 25, 2021).

Q. If SWEPCO is not serving Eastman's load, not providing electricity at the time of the monthly peak when you report network load – you with me so far?
A. Yes, I think so.

Q. SWEPCO will still report the usage behind the meter by Eastman. Correct?
A. Yes, for transmission billing. Yes.

Q. So, I wanted to clarify that when you use the term "load," you're not referring to SWEPCO's load, you're referring to Eastman's load. Is that fair?
A. Yes, that's fair. . . .[75]

By their very nature and by SWEPCO's admission, the reported Eastman "loads were not served by SWEPCO because the load values reflect Eastman self-generated electricity only. As a result, SWEPCO reported Eastman's retail BTMG load as being served by SWEPCO's system to impute a phantom load for reporting purposes as if it were on SWEPCO's system at the zonal peak hour. The load that SWEPCO reported to SPP is an artificial farce.

The second mistake that SWEPCO made in Texas was that it manufactured a phantom load for only one retail BTMG customer, while not even bothering to find any way to manufacture comparable phantom loads for the other 184 retail BTMG customers in Texas. SWEPCO has 185 retail BTMG customers in Texas, including Eastman.[76] At least three retail BTMG customers are cogeneration facilities (including Eastman) and the rest appear to be commercial or residential solar facilities.[77] SWEPCO claims that it did not include loads for these other retail BTMG customers because it does not have data for each of them. But that can hardly be an excuse when SWEPCO is manufacturing phantom loads that are not served by SWEPCO for one, but not all retail BTMG customers. Knowing that it only had behind-the-meter load values on one customer out of 185 customers, SWEPCO could have and should have delayed its decision to report all of the retail BTMG load in Texas until it had a reasonable method of collecting such data from some, if not all, of the retail BTMG customers. But it inexplicably did not. The failure to do so is arbitrary and unreasonably discriminatory.

[75] Tr. 1188:12-22 (Ross)(May 25, 2021).

[76] Eastman Ex. 10.

[77] *Id.*

There are two critical impacts of SWEPCO's mismanaged implementation – both of which are unreasonable and discriminatory. *First*, SWEPCO's implementation of reporting only Eastman's retail BTMG load is discriminatory against SWEPCO ratepayers in Texas in general and against Eastman directly because there are 184 other retail BTMG load customers that are not being charged any increased rates and are not impacted at all by SWEPCO's decision. As explained earlier, inclusion of Eastman's phantom retail BTMG load in SWEPCO's monthly network load reports caused an increase in the transmission costs that SPP allocated to SWEPCO's Texas jurisdiction to the tune of an additional $5.7 million.[78] Eastman is expected to pay approximately $3.96 million of the increased costs and the remaining LLP customers appear to make up the difference.[79] *Second*, because SWEPCO consciously did not include any phantom load attributable to any retail BTMG customers in Arkansas and Louisiana, the retail BTMG customers in both of those states benefited from no increased allocation of transmission costs or new rates imposed to recover those costs to the detriment of the Texas ratepayers. As SWEPCO witness John Aaron admitted:

> Q. And it shows that including Eastman – or with Eastman adds the $5.7 million to the Texas jurisdictionally [sic] revenue requirement. Correct?
> A. That's correct.
>
> Q. And it reduces the Arkansas revenue requirement by $2 million. Correct?
> A. Correct.
>
> Q. And it reduces the Louisiana revenue requirement by $3.7 million. Correct?
> A. Correct.[80]

SWEPCO only included the Texas retail BTMG load – namely, Eastman's load – in its allocation calculation between its three jurisdictions.[81]

---

[78] Tr. 1210:24-1211:5 (Aaron)(May 25, 2021); Tr. 647:18-648:1(ALJ Neinast), 648:2-20 (Pollock), and 651:1-20 (Pollock)(May 21, 2021).

[79] Tr. 1263:23-1264:3 (Jackson)(May 25, 2021) (related to SWEPCO's original proposal). Even under SWEPCO's rebuttal revised proposal, at this time, the only identified customer that the SSGL rate applies to is Eastman. Tr. 1504:22-1505:7 and 1511:25-1512:2 (Jackson)(May 26, 2021).

[80] Tr. 1211:19-1212:3 (Aaron)(May 25, 2021). Mr. Aaron further agrees that SWEPCO did not include retail BTMG load in the calculation of the Arkansas allocation or the Louisiana allocation. *Id.* at 1212:8-22.

[81] Tr. 1212:23-1213:3 (Aaron)(May 25, 2021). *Also see* TIEC Ex. 74 at 2.

If SWEPCO was going to impose this voluntary decision to report retail BTMG load only from Texas in its monthly load reports to SPP, it should have and could have taken sufficient time to come up with a method to apply its interpretation to all retail BTMG customers in all of the three states that would not unduly benefit or harm customers in each jurisdiction. But it did not and, instead, it chose to seek recovery of $5.7 million primarily from Eastman and solely in Texas, while benefitting Arkansas and Louisiana by reduced revenue requirements.

VII. C. TRANSMISION RATE FOR RETAIL BEHIND-THE-METER GENERATION

The Commission should reject SWEPCO's synchronized self-generation (SSGL) rate.[82] This new rate was created solely to recover the additional transmission costs from retail BTMG that is synchronized with the SWEPCO transmission system and by definition applies only to Eastman. The new rate should be rejected because it is inconsistent with cost causation principles and because the new rate will apply only to Eastman. Both issues are discussed below.

1. The proposed rate should be rejected because it is inconsistent with cost causation principles.

The netting of retail BTMG load is consistent with cost causation principles; gross reporting of the retail BTMG is not. The majority of transmission costs are driven by system peak demand and not by the individual customer's peak demand. This is why the FERC allocates network transmission costs based on the total of all customer demand at the time of the system peak, rather than based on each customer's individual peak demand.[83] Both the FERC's pro-forma Open Access Transmission Tariff and the SPP OATT rely on a 12 CP cost allocation method to allocate network transmission costs. Only if a retail BTMG experiences an outage during one of the monthly system peaks should the load served by the retail BTMG be included in the Network Customer's Network Load report at the time of the system peak for that month. Over time, netting retail BTMG under the 12 CP cost allocation method achieves a fair and

[82] In SWEPCO's direct case, it did not refer to the new proposed rate in testimony, but the proposed rate was named a "TRANSMISSION CHARGE" in SWEPCO's proposed tariff. *See* SWEPCO Ex. 1, Sch. Q-8.8 at 103. In rebuttal, SWEPCO then decided to refer to the new proposed rate as the "Synchronized Self-Generation Rate". Rebuttal Testimony of Jennifer L. Jackson, SWEPCO Ex. 55 at 12.

[83] Eastman Ex. 1 at 22-23.

realistic measurement of the expected contribution to actual system peak on the transmission system by the customer's load that is served behind the meter by retail BTMG.[84]

In sharp contrast, gross reporting of retail BTMG is not consistent with cost causation principles. Gross reporting of BTMG is typically used to report *wholesale* BTMG loads. Wholesale BTMG is different than retail BTMG.[85] Wholesale BTMG is generation that is operated by a wholesale customer, such as a municipality or an electric cooperative, and is typically dedicated to meeting the needs of that utility's own retail customers. However, wholesale BTMG is typically only dispatched to provide energy to the utility's own customers when it is more economic to do so than buying energy from the wholesale market via the transmission grid. As a result, load served by wholesale BTMG is frequently served from energy delivered over the transmission grid rather than from energy generated by the wholesale BTMG. Accordingly, wholesale BTMG loads are generally reported on a gross basis.[86] That of course is fundamentally different from retail BTMG that supplies all of an entity's power supply and rarely, if ever, uses the transmission network.

Because gross load reporting typically allocates costs to the Network Customer by imputing the NCP demand of the load serviced by the retail BTMG and adding that phantom demand to the determination of the retail customer's contribution to the system peak demand, the gross reporting artificially increases the Network Customer's Network Load even though the retail BTMG load is not actually drawing power from the system at the time of the peak.[87] In other words, the use of gross reporting for retail BTMG does not reflect actual costs imposed on SWEPCO's system or on SPP's system at the time of the monthly coincident zonal peak hour. As a result, Eastman's retail BTMG load is not the cause of any additional costs or burden on either SWEPCO's or SPP's systems. SWEPCO should not be allowed to recover costs of a phantom load from retail BTMG customers, namely Eastman, because no retail BTMG customer caused these costs; the costs are the result of SWEPCO using gross reporting that includes an artificial load.

---

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] Eastman Ex. 1 at 7-8.

2. SWEPCO's initial proposed rate to recover the $5.7 million of additional allocated costs should be rejected.

In its direct case, SWEPCO barely described and did not explain its new synchronized self-generation (SSGL) rate. Other than mentioning how the rate of $2.20/kW was calculated, SWEPCO did not provide any explanation or justification for the rate.[88] Instead, the definition of the rate and how it is applied is buried in SWEPCO's proposed tariff in Schedule Q, Section 8.8. In that Schedule, SWEPCO defined the SSGL as follows:

> VI. TRANSMISSION CHARGE:
> The monthly rate for all contract demand allocated to a customer with behind-the-meter generation which is synchronized to the SPP grid, or its successor, and whose load is assigned transmission demand through SWEPCO's Load Ratio Share calculated by the SPP will be $2.20 per kW of contract demand for Backup, Maintenance, and As Available Standby Service.
>
> . . .
>
> **TERMS AND CONDITIONS**
>
> . . .
>
> Customers with behind-the meter self-generation that is synchronized with the SWEPCO transmission system and whose load is included in SWEPCO's load ratio share allocation from the Southwest Power Pool (SPP), or its successor, shall be assessed a monthly transmission charge commensurate with the amount of contract demand for Back-up, Maintenance, and As-Available Standby Service under this tariff.[89]

This proposed rate should be called for what it is – a special rate solely applicable to Eastman applied to billing determinants that have nothing to do with Eastman's retail BTMG load.

By definition, the only customer that could be subject to and be required to pay this rate is Eastman. Eastman's retail BTMG load is the only retail BTMG load that SWEPCO reports to SPP.[90] By definition, then, the additional allocated costs resulting from an artificial increase in SWEPCO's load ratio share allocation from SPP resulted only from SWEPCO's unjustified voluntary decision to include Eastman's retail BTMG load in its monthly network load reports to SPP.

---

[88] Direct Testimony of Jennifer L. Jackson, SWEPCO Ex. 32 at 23.

[89] SWEPCO Ex. 1, Sch. Q-8.8 at 103.

[90] Tr. 1263:23-1264:3 (Ross)(original proposal)(May 25, 2021) and Tr. 1504:22-1505:7 and 1511:25-1215:2 (Jackson)(May 26, 2021)(rebuttal revised proposal).

The new SSGL rate design is also flawed because it is based on "contract demand" for Back-up, Maintenance, and As-Available Standby Service that the retail BTMG negotiated with SWEPCO. In Eastman's case, the contract demand is a negotiated amount in place for decades related to SWEPCO maintenance and standby power.[91] Those billing determinants have no bearing or relationship at all with Eastman's BTMG retail load, much less Eastman's peak BTMG retail load[92] – absolutely none. Nor do the billing determinants reflect Eastman's actual retail BTMG load at the time of the SPP zonal peak.[93] SWEPCO witness Jackson conceded that the contract demand billing determinants were higher than Eastman's actual retail BTMG quantities.[94] There is no rationale or even conceivable, much less demonstrated, relationship between the negotiated contract for standby service and the charge SWEPCO asks to assign to Eastman's self-generated load behind the meter.

As a result of these flaws, SWEPCO's proposed SSGL rate should be rejected because it does not reflect proper ratemaking principles for two reasons. *First*, the rate, as applied, is inconsistent with the underpinnings and basic requirements of the OATT Tariff because it would inappropriately bill Eastman for its retail BTMG load based on its backup contract kW, which is essentially a proxy for the NCP demand of the load served by Eastman's retail BTMG.[95] The new rate recovers "costs" that do not reflect any load that Eastman is actually taking from SWEPCO and it increases by more than double Eastman's annual costs paid to SWEPCO. Eastman's load demand on SWEPCO's system has not changed at all – the increase is solely based on SWEPCO's decision to include a proxy for Eastman's retail BTMG load as if that load is being served by SWEPCO. SWEPCO has not pointed to or identified any change in Eastman's load demand on SWEPCO's system at any time over the last couple of decades that are not already covered by assessing the standby power charges. This approach is inconsistent with the fact that the SPP's Network Load reporting is based on demand at the time of the zonal system peak.[96]

---

[91] Tr. 1514:5-10 (Jackson)(May 25, 2021).

[92] Tr. 1513:17-1514:21 (Jackson)(May 25, 2021).

[93] Tr. 1514:11-15 (Jackson)(May 25, 2021).

[94] Tr. 1513:16-21 (Jackson)(May 25, 2021).

[95] Eastman Ex. 1 at 26.

[96] Eastman Ex. 1 at 27.

Second, the proposed SSGL rate is inconsistent with cost causation principles because Eastman's retail BTMG load is not driving up transmission costs. As Eastman witness Al-Jabir explained and no witness disputes, it is the system peak demand and not individual peak that drives actual transmission costs.[97] Individual customer peak demands are only relevant as cost drivers for more localized, lower voltage level facilities.[98] The FERC's use of the 12 CP allocation method for transmission costs reflects the fact that utilities plan their transmission systems to meet the system coincident peak demands.[99] The principle underlying the FERC's 12 CP cost allocation method for network transmission service is that the customer demands imposed at the time of the system peak are the drivers for transmission investment. This principle is also consistent with the causal factor for transmission investment. In sharp contrast, the $5.7 million that SWEPCO seeks to recoup is based on artificial additional allocated costs of an individual customer's retail BTMG load that is not served by SWEPCO at the time of coincident zonal peak. The Commission should reject this proposed rate because it violates both cost causation and ratemaking principles.

3. SWEPCO's proposed SSGL rate in rebuttal should likewise be rejected.

In rebuttal, in a weak attempt to deflect Eastman's and TIEC's criticisms of SWEPCO's decision to include Eastman's retail BTMG load in its monthly network load reports and to still be able to recoup most of the additional revenue requirement from a single customer, SWEPCO proposed a "revised" SSGL rate without any specifics other than it would report customer loads and apply a new rate to any customers the Commission "deems appropriate."[100] But on cross-examination, SWEPCO witness Jackson admitted:

- SWEPCO did not have a definition of what other retail BTMG customers to which the revised proposed SSGL rate would apply.[101]
- Most other retail BTMGs did not have contracts with SWEPCO, so SWEPCO would have to investigate how it could determine "contract demand" billing determinants.[102]

---

[97] *Id.*

[98] Eastman Ex. 2 at 7.

[99] *See* Section VII.C.1. discussion, *supra*. *Also see*, Eastman Ex. 1 at 24-25.

[100] SWEPCO Ex. 52 at 16; Tr. 1514:22-1515:6 (Jackson)(May 26, 2021).

[101] Tr. 1511:21-1512:9 (Jackson)(May 26, 2021).

- The revised SSGL rate would still likely be applied to "contract demand" as billing determinants.[103]

- SWEPCO did not have a time frame by which it could identify additional customers to which this rate would apply or how it would determine those appropriate billing determinants.[104]

Basically, in rebuttal, SWEPCO threw up its hands and said – Commission, tell us what retail BTMG customers we should include in the monthly network load report; tell us what billing determinant we should apply an SSGL rate to; and we will try to do it after looking into what you tell us to do. Even if the Commission approved the SWEPCO revised proposed SSGL rate, SWEPCO has not provided any time frame or certainty how or if it could implement a new SSGL rate. But if SWEPCO's proposed definition of what the SSGL rate is and who it applies to is left in as currently proposed, what is certain is that Eastman, and only Eastman, will be required to pay the SSGL rate based on contract demand determinants. Such a result is unreasonable and discriminatory, and consequently should be rejected.

4. SWEPCO's proposed SSGL rate should be rejected because it constitutes rate shock to Eastman.

SWEPCO's proposed SSGL rate will more than double Eastman's annual costs and payments to SWEPCO. Eastman currently pays SWEPCO approximately $3.6 million for standby power (maintenance and backup) under the SBMA Tariff.[105] Under SWEPCO's original proposed SSGL rate, Eastman would pay an additional $3.96 million annually resulting from SWEPCO's decision to include Eastman's retail BTMG load in its network load reporting. Even under SWEPCO's rebuttal revised SSGL rate proposal, Eastman would pay $3.27 million annually in additional costs. An increase of over 100% in annual costs to a single customer immediately upon the effective date of the approved rates constitutes rate shock by any measure and is unjustified and unwarranted.

---

[102] Tr. 1515:16-1516:25 and 1518:4-1519:22 (Jackson)(May 26, 2021). And recall, that SWEPCO witness Ross admitted that SWEPCO does not have meter data or load data on any other retail BTMG customer. Tr: 1168:5-12 (Ross)(May 25, 2021).

[103] Tr. 1518:4-1519:22 (Jackson)(May 26, 2021).

[104] Tr. 1515:16-25 and 1518:22-1519:22 (Jackson)(May 26, 2021).

[105] Eastman Ex. 1 at 3.

Testimony in this case, with the notable exception of SWEPCO's testimony on this issue, universally recognizes a regulatory policy preference to move rates to more accurately reflect cost causation. While from a regulatory policy perspective moving rates to reflect the costs of a particular class is desirable, that general policy is tempered by the concept of "gradualism." A gradualism adjustment is appropriate where movement to cost would result in an increase that is "out of proportion or harsh to a particular class,"[106] or where the increases are "harsh to particular classes and promote rate shock."[107] SWEPCO would have the Commission believe that in rebuttal, it proposed a rate moderation proposal to move rate schedules to classes subject to gradualism constraints.[108] But, SWEPCO's gradualism constraints have little to no impact on the amount of costs that will be assessed to and paid by Eastman under its proposal – the rate shock of an increase of over 100% annually in costs for a single customer is harsh and unwarranted.

The foundational problem setting rates to reflect cost causation with respect to the additional allocated jurisdictional amounts sought by SWEPCO that it proposes to pass through to Eastman[109] is that it assumes there is some cost causation relationship between the additional costs and the cost of providing Eastman service. Eastman has done nothing to cause an increase in costs associated with its retail BTMG load – in fact, as has been established earlier in this brief, because Eastman's retail BTMG load is behind the meter, it does not cause any additional burden or costs. SWEPCO does not really dispute that fact and as outlined above has persuasively argued that very case to SPP. SWEPCO points to no change in facts or tariff language to justify this proposal.

The only reason that SWEPCO asks to flow this piece of its proposed revenue requirement through its class revenue distribution to Eastman solely rests with SWEPCO's voluntary, unjustified, and discriminatory decision to add a proxy for Eastman's retail BTMG load in its monthly load reporting to SPP. In the absence of credible evidence of actual cost

---

[106] Application of Entergy Texas, Inc. for Authority to Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment, Docket No. 39896, Proposal for Decision at 284 (Jul 6, 2012).

[107] Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs, Docket No. 40443, Redacted Proposal for Decision at 269 (May 20, 2013).

[108] Tr. 1503:14-23 (Jackson)(May 26, 2021).

[109] TIEC Ex. 74 at 2; Tr. 1210:3-1211:8 (Aaron)(May 25, 2021).

causation, the consequence of SWEPCO's voluntary reversal of its longtime approach to load reporting should not rest with Eastman or any other customer or customer class and none of the $5.7 million sought by SWEPCO should be recovered from Texas customers in the final approved class revenue distribution.[110]

The other inherent problem with any approach that moves rates to cost of service without gradualism by customer class is that it can hide the actual and detrimental rate shock on a specific customer within a class – especially when there is no other customer that will pay that rate as is true here with the proposed SSGL rate, where Eastman is singled out by definition of the rate. SWEPCO witness Jackson suggests that SWEPCO did not directly assign the BTMG transmission cost to the BTMG customer (which is Eastman).[111] But, in fact, it has defined the SSGL rate to basically "assign" $3.96 million (original) or $3.27 million (rebuttal revised)[112] directly and solely to Eastman. While SWEPCO may claim that it has applied some form of gradualism in its rebuttal case – SWEPCO has done nothing to minimize or to alter the absolute rate shock to Eastman. As discussed previously, the notion that SWEPCO may add other retail BTMG loads in its monthly load reporting is nothing more than conjecture given that there are no efforts to identify how the retail BTMG load would be determined for any of the other 184 retail BTMG in Texas or how long it would take to implement additional reporting.[113]

Eastman has not taken any action that caused the increase in SWEPCO's jurisdictional allocation of costs. It has not put any additional burden on SWEPCO's system, and it has not taken any action that warrants over 100% in additional costs to be paid to SWEPCO. SWEPCO's class distribution study fails to prevent rate shock to Eastman because of the manner that SWEPCO has defined and will implement the SSGL rate. As a result, Eastman requests that the SSGL rate be rejected in its totality.

---

[110] In Eastman's mind, there still remains a question as to how the $5.7 million of additional allocated jurisdictional transmission costs was calculated and why that amount translates into $7.97 million allocated to the Industrial Class. *See* TIEC Ex. 74 at 4. From Eastman's perspective, the Commission should never reach this issue because the $5.7 million included in SWEPCO's cost of service and revenue requirement should be disallowed.

[111] Rebuttal Testimony of Jennifer Jackson, SWEPCO Ex. 55 at 13.

[112] Tr. 1504:22-1505:7 (Jackson)(May 26, 2021). *Also see* TIEC Ex. 78.

[113] Tr. 1515:20-25 ("would have to work out the details"), 1518:13-1519:17 (would have to determine billing determinants); 1522:21-1523:2 (SWEPCO does not have any information or knowledge that the proposed SSGL rate would apply to any other retail BTMG customer)(Jackson)(May 26, 2021).

XI. CONCLUSION

The disputes raised on these issues are clearly and solely within the purview of the Commission. The Commission should reject SWEPCO's attempt to artificially inflate its cost-of-service revenue requirement on the basis of SWEPCO's voluntary decision to add Eastman's phantom retail BTMG load in its monthly network load reports to SPP. SWEPCO's proposal to include $5.7 million in artificial and additional allocated costs in its revenue should be disallowed because the costs are not reasonable or justified to provide service to any Texas customer. Finally, the Commission should reject SWEPCO's proposed SSGL rate that, by definition, applies only to Eastman, is discriminatory, is inconsistent with cost causation principles, and would inflict unwarranted rate shock on Eastman. For all of the reasons stated herein, Eastman respectfully requests that the Commission disallow SWEPCO's proposed additional $5.7 million in cost-of-service revenue requirement and reject SWEPCO's proposed SSGL rate, and for any other relief to which Eastman is justly entitled to.

Respectfully submitted,

Eastman Chemical Company
Suzanne Spell
Senior Business Counsel
Eastman Chemical Company
200 South Wilcox Drive
Kingsport, TN 37662
423.229.2802
stspell@eastman.com

ENOCH KEVER PLLC
Andrew Kever
State Bar No. 11367050
Katherine Mudge
State Bar No. 14617600
Enoch Kever PLLC
7600 N. Capital of Texas Hwy
Building B, Suite 200
Austin, TX 78731
512.615.1200 (phone)
512.615.1198 (facsimile)
akever@enochkever.com
kmudge@enochkever.com

By: _____
ATTORNEYS FOR EASTMAN CHEMICAL COMPANY

CERTIFICATE OF SERVICE

I certify that a copy of this document was served by electronic mail, on all parties of record in this proceeding on June 17, 2021, in accordance with the Orders Suspending Rules, issued in Project No. 50664.

Katherine K. Mudge